

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-7 are presently pending in this case. Claims 1 and 3-7 are amended by the present amendment. As amended Claims 1 and 3-7 are supported by the original disclosure,<sup>1</sup> no new matter is added.

In the outstanding Official Action, Claims 1, 3, 5, and 7 were rejected under 35 U.S.C. §103(a) as unpatentable over Itoh et al. (U.S. Patent Application Publication No. 20060205358, hereinafter “Itoh”) in view of Franchi et al. (European Patent Application Publication No. 1 381 180, hereinafter “Franchi”); and Claims 2, 4, and 6 were rejected under 35 U.S.C. §103(a) as unpatentable over Itoh in view of Franchi and further in view of Alastalo (U.S. Patent No. 6,721,302).

With regard to the rejection of Claims 1 and 7 as unpatentable over Itoh in view of Franchi, that rejection is respectfully traversed.

Amended Claims 1 and 7 recite in part “determining a modulation scheme to be used in the packet communications based on the channel quality and the buffered data amount, ***said determining including determining the modulation scheme by selecting a modulation scheme using a smallest available transmission block size that is greater than or equal to the amount of data buffered.***”

The outstanding Office Action cited adaptive modulation and coding unit 14 and modulation unit 52 of Itoh as describing “a modulation scheme determination unit” as recited in original Claim 1.<sup>2</sup> However, paragraph 114 of Itoh clearly describes that control unit 22 determines the modulation scheme. Further, paragraph 125 of Itoh describes that control unit 22 determines the modulation scheme based on the quality of the transmission path. It is

---

<sup>1</sup>See, e.g., the specification at page 8, line 30 to page 9, line 19.

<sup>2</sup>See the outstanding Office Action at page 3, lines 10-13.

respectfully submitted that no portion of Itoh describes selecting a modulation scheme using a smallest available transmission block size that is greater than or equal to the amount of data buffered as recited in amended Claims 1 and 7.

The outstanding Office Action cited Franchi as describing varying a modulation scheme according to the amount of data buffered for transmission.<sup>3</sup> However, paragraph 41 of Franchi describes that the modulation scheme is selected so as to use the lowest data rate necessary to prevent the buffer from filling. Thus, it is also respectfully submitted that no portion of Franchi describes selecting a modulation scheme using a smallest available transmission block size that is greater than or equal to the amount of data buffered as recited in amended Claims 1 and 7.

Thus, it is respectfully submitted that neither Itoh nor Franchi teach or suggest “determining a modulation scheme” as defined in amended Claim 1. Consequently, Claims 1 and 7 (and Claim 2 dependent therefrom) is patentable over Itoh in view of Franchi.

Amended Claims 3 and 5 recite in part “a modulation scheme determination unit configured to determine a modulation scheme for the packet communications based on the channel quality and the buffered data amount in the transmission buffer, *said modulation scheme determination unit configured to determine the modulation scheme by selecting a modulation scheme using a smallest available transmission block size that is greater than or equal to the amount of data buffered.*”

As noted above, neither Itoh nor Franchi teach or suggest selecting a modulation scheme using a smallest available transmission block size that is greater than or equal to the amount of data buffered. Consequently, it is respectfully submitted that neither Itoh nor Franchi teach or suggest “a modulation scheme determination unit” as defined in amended

---

<sup>3</sup>See the outstanding Office Action at page 3, lines 16-18.

Application No. 10/736,698  
Reply to Office Action of October 25, 2007

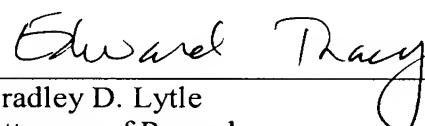
Claims 3 and 5. Consequently, Claims 3 and 5 (and Claim 4 and 6 dependent therefrom) is patentable over Itoh in view of Franchi.

With regard to the rejection of Claims 2, 4, and 6 as unpatentable over Itoh in view of Franchi and further in view of Alastalo, it is noted that Claims 2, 4, and 6 are dependent from Claims 1, 3, and 5, respectively, and thus are believed to be patentable for at least the reasons discussed above. Further, it is respectfully submitted that Alastalo does not cure any of the above-noted deficiencies of Itoh and Franchi. Accordingly, it is respectfully submitted that Claims 2, 4, and 6 are patentable over Itoh in view of Franchi and further in view of Alastalo.

Accordingly, the pending claims are believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

  
\_\_\_\_\_  
Bradley D. Lytle  
Attorney of Record  
Registration No. 40,073

Edward W. Tracy, Jr.  
Registration No. 47,998

Customer Number  
22850

Tel: (703) 413-3000  
Fax: (703) 413 -2220  
(OSMMN 08/07)

I:\ATTY\ET\246696US\246696US-AMD1.25.08.DOC